

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

DAVID HOWELL,

Plaintiff,

MAIZE W. PUSICH, *et al.*,

## Defendants.

Case No. 3:17-cv-00736-MMD-WGC

ORDER ACCEPTING AND ADOPTING  
REPORT AND RECOMMENDATION  
OF MAGISTRATE JUDGE  
WILLIAM G. COBB

Before the Court is the Report and Recommendation of United States Magistrate Judge William G. Cobb (ECF No. 3) ("R&R") relating to plaintiff's application to proceed *in forma pauperis* ("IFP Application") (ECF No. 1) and *pro se* complaint (ECF No. 1-1). Plaintiff filed his objection on February 6, 2018 ("Objection"). (ECF No. 4.)

This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge’s report and recommendation, then the court is required to “make a *de novo* determination of those portions of the [report and recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge’s report and recommendation where no objections have been filed. See *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard

1 of review employed by the district court when reviewing a report and recommendation to  
2 which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,  
3 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the  
4 view that district courts are not required to review "any issue that is not the subject of an  
5 objection."). Thus, if there is no objection to a magistrate judge's recommendation, then  
6 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.  
7 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to  
8 which no objection was filed).

9 The Magistrate Judge recommends granting Plaintiff's IFP Application. Plaintiff  
10 does not object to this recommendation. Accordingly, the Court will accept that  
11 recommendation.

12 The Magistrate Judge recommends dismissing the complaint with prejudice  
13 because Plaintiff cannot state a claim under 43 U.S.C. § 1983 against his assigned  
14 public defender, Maize Pusich, for failing to advise the Nevada Department of Corrections  
15 of the risks of harm in housing him in general population. (ECF No. 3 at 4.) The gist of  
16 Plaintiff's objection is that a public defender is not immune from suit. (ECF No. 4.)  
17 However, the Magistrate Judge correctly found that a public defender is not a state actor  
18 and therefore cannot be deemed to have acted under color of law to give rise to liability  
19 under section 1983. (ECF No. 3 at 4.)

20 It is therefore ordered, adjudged and decreed that the Report and  
21 Recommendation of Magistrate Judge William G. Cobb (ECF No. 3) is accepted and  
22 adopted in its entirety.

23 It is ordered that plaintiff's application to proceed *in forma pauperis* (ECF No. 1)  
24 without having to prepay the full filing fee is granted; plaintiff will not be required to pay  
25 an initial installment fee. Nevertheless, the full filing fee will still be due, pursuant to 28  
26 U.S.C. § 1915, as amended by the Prisoner Litigation Reform Act of 1996. Plaintiff is  
27 permitted to maintain this action to conclusion without the necessity of prepayment of  
28 ///

1 fees or costs or the giving of security therefor. This order granting *in forma pauperis*  
2 status will not extend to the issuance of subpoenas at government expense.

3 It is further ordered that, pursuant to 28 U.S.C. § 1915, as amended by the  
4 Prisoner Litigation Reform Act of 1996, the Nevada Department of Corrections will pay to  
5 the Clerk of the United States District Court, District of Nevada, 20% of the preceding  
6 month's deposit to the account of David Howell, Inmate No. 93054 (in months that the  
7 account exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The  
8 Clerk will send a copy of this order to the Attention of the Chief of Inmate Services for the  
9 Nevada Department of Corrections, P.O. Box 7011, Carson City, NV 89702.

10 It is further ordered that the Clerk detach and file the complaint (ECF No. 1-1).

11 It is further ordered that this action is dismissed with prejudice and the Clerk is  
12 instructed to close the case.

13 DATED THIS 2<sup>nd</sup> day of March 2018.

14  
15   
16 MIRANDA M. DU  
17  
18 UNITED STATES DISTRICT JUDGE  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28